

REMARKS/ARGUMENTS

Claims 1-24 are pending in the present application.

This Amendment is in response to the Office Action mailed September 1, 2005. In the Office Action, the Examiner objected to drawings, rejected claims 1-24 under 35 U.S.C. §103(a). Applicants have amended claims 1-9 and 11-23, and added claims 25-55. The amendments to claims 1-9 and 11-23 are to clarify aspects of the claimed invention and to correct minor informalities, not to distinguish from the cited prior art references. Applicants submit that the newly-added claims introduce no new matter. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

Drawings

In the Office Action, the Examiner states that new corrected drawings are required because the drawings contain hand drawn text and numbers. In response, Applicants are submitting formal drawings. Accordingly, Applicants respectfully request the objection to the drawings be withdrawn.

Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 1-24 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,850,252 issued to Hoffberg ("Hoffberg"), U.S. Patent No. 6,222,530 issued to Sequeira ("Sequeira") and U.S. Patent No. 6,216,265 issued to Roop et al. ("Roop"). Applicants respectfully traverse the rejection and contend that the Examiner has not met the burden of establishing a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP §2143, p. 2100-129 (8th Ed., Rev. 2, May 2004)*. Applicants respectfully contend that there is no suggestion or motivation to combine their teachings, and thus no *prima facie* case of obviousness has been established.

Hoffberg discloses intelligent electronic appliance system and method. An adaptive user interface changes in response to the context, past history, and status of a system (Hoffberg, col. 110, lines 55-56). A metadata stream associated with a content and data relating to the use of consumption of the content is used to determine or update the user profile (Hoffberg, col. 131, lines 61-67). A set top box may integrate functions desired by the content provider or network operator such as video-on-demand, pay per view accounting (Hoffberg, col. 220, lines 34-38). The set top box may store the media or present it in real time, subject to the application of access rules and conditions (Hoffberg, col. 220, lines 49-51).

Sequeira discloses a system and method for a master scheduler. A system controls, identifies and coordinates multimedia assets for a broadcast program and increases the tolerance of broadcast systems to the failure of the scheduler (Sequeira, col. 1, lines 6-9). A status ttLOADED from the video media server indicates that the task is loaded, queued and awaiting executing (Sequeira, col. 13, lines 49-51). In a system scheduling mechanism 340, threads are used by different parts of the system to perform various computations, functions and tracking (Sequeira, col. 9, lines 18-20). The Master Scheduler is adapted to schedule events where the viewing of an asset, such as graphics, animation, audio, text, video, or any other such digital media, constitutes the event (Sequeira, col. 2, lines 59-65).

Roop discloses a system and method for transmitting and utilizing electronic program guide information. A reception group (RG) descriptor has a number of fields. A cable system name field contains the name of the cable system and the multiple system operator (MSO) name (Roop, col. 67, lines 60-67; col. 68, lines 1-5)

Hoffberg, Sequeira and Roop, taken alone or in any combination, do not disclose, suggest, or render obvious, at least one of (1) receiving metadata associated with a multimedia asset data file provided by at least one of a content provider and a multiple service/systems operator ("MSO"); (2) coordinating uploading the multimedia asset data file and associated metadata to a VOD server maintained by the MSO, wherein coordinating comprises (a) scheduling uploading the multimedia asset data file and associated metadata to a server maintained by the MSO, and (b) tracking uploading the multimedia asset data file and associated metadata to the server; and (3) providing usage reports relating to usage of multimedia asset data files by end users of the MSO.

Independent claim 1:

Regarding independent claim 1, the Examiner contends that Hoffberg teaches:

- a) "... receiving metadata ...", citing Hoffberg, col. 133, lines 1-13 and col. 131, lines 65-67. Applicants respectfully disagree for the following reasons.

For ease of reference, the excerpts are copied below.

"According to another aspect of the invention, it is an object to provide an image information retrieval apparatus, comprising a memory for storing compressed data representing a plurality of images; a data storage system for retrieving compressed data representing at least one of the plurality of images and having an output; a memory for storing characterization data representing a plurality of image types, having an output; and an image processor, receiving as inputs the outputs from the data storage system and the characterization data memory, and producing a signal corresponding to a relation between at least one of the plurality of images of the compressed data and at least one of the image types of the characterization data." (Hoffberg, col. 133, lines 1-13)

"The metadata and data relating to the use or consumption of the content is then used to determine or update the user profile. It is noted that the content may be of any type, and therefore need no be video or multimedia" (Hoffberg, col. 131, lines 65-67; col. 132 line 1)

As seen from the above excerpt, Hoffberg, col. 133, lines 1-13, merely discloses storing compressed image data, retrieving the compressed image data, and producing a signal corresponding to a relation between the images and the image types. None of these corresponds to receiving metadata. Compressed image data are data representing images that are compressed or reduced. They usually contain less information on the images. At best, for a lossless compression, they contain the same information on the images that they represent. Therefore, they cannot represent contextual information about the images, or additional information that describes the images. In contrast, metadata represent contextual or additional information related to a content such as title, release date, plot summary, cast, crew, rating, length, price per view, and scheduling information, etc. (See, for example, Specification, paragraph [0010]. In addition, Hoffberg, col. 131, lines 65-67; col. 132 line 1, merely discloses using the metadata and data relating to the use or consumption of the content to determine or update the user profile, not

receiving the metadata used in upload coordination, scheduling, or tracking. Receiving metadata is an act of taking or acquiring the metadata that is transmitted, while using the metadata simply means employing the metadata that is part of the content.

- b) "... from a content provider ...", citing Hoffberg, col. 120, lines 7-9. Applicants respectfully disagree for the following reasons.

For ease of reference, the excerpt is copied below.

"Thus, broadcasters and content providers may encode broadcasts in such a way as to control the operation of the consumer device."
(Hoffberg, col. 120, lines 7-9).

Hoffberg, therefore, merely discloses content providers encoding broadcasts to control the consumer device, not content providers providing the multimedia asset data files and metadata. Encoding broadcasts involves using encryption for copy protection. The encryption encodes the information using a key. It modifies the information such as the information may be recovered later. Therefore, it does not provide any contextual or additional information to the content. In contrast, metadata represent contextual or additional information related to a content, as discussed above.

- c) "... and associated metadata to a VOD server ...", citing Hoffberg, col. 131, lines 1-3 and col. 220, lines 36-68 and lines 52-54.

For ease of reference, relevant portions of the excerpts are copied below.

"The set top box may also integrate functions desired by the content provider or network operator, e.g., the multiple service operator (MSO). For example, video-on-demand, pay-per view accounting, digital rights management and enforcement, and the like." (Hoffberg, col. 220, lines 34-38.)

"Preferably, each set top box is separately addressable, and is in regular, though not necessarily continuous communication with a remote digital rights management server." (Hoffberg, col. 220, lines 52-54.)

Hoffberg merely discloses a set top box that may integrate functions desired by a content provider or an MSO (Hoffberg, col. 220, lines 34-36). A set top box can only receive broadband streams (Hoffberg, col. 219, lines 54-56). It is incapable of uploading or coordinating uploading

the metadata or the content to a VOD server. In addition, since it receives broadband streams at times scheduled by an MSO, it cannot schedule or track uploading the content. Accordingly, Hoffberg does not disclose or suggest uploading or coordinating uploading metadata and multimedia asset data file to a server

- d) "... and providing usage reports relating to usage...", citing Hoffberg, col. 164, lines 7-12 and col. 129, lines 4-7 (Office Action, page 3, paragraph number 4). Applicants respectfully disagree for the following reasons.

For ease of reference, the excerpts are copied below.

"In the case of a single user or group of users, the interface could maintain a history of feature usage for each user, as in the past user history block 2107, and provide a lower user interface level for those features which are rarely used, and therefore less familiar to the user, through the current user level output 2101." (Hoffberg, col. 164, lines 7-12)

"This would allow geographically appropriate selection of commercial information, and possibly overlay information as well, e.g., traffic reports." (Hoffberg, col. 129, lines 4-7)

As seen from the above, Hoffberg, col. 164, lines 7-12, merely states that the interface could maintain a history of feature usage for each user, and provide a lower user interface level for those features which are rarely used. A history of feature usage includes past uses of certain feature, e.g., requesting "help", at a user interface level (Hoffberg, col. 163, lines 58-60), not usage of the multimedia asset data files. A user interface level relates manipulation of input devices, such as program key entry, trackball, joystick, etc. (Hoffberg, col. 161, lines 47-57). In contrast, usage of asset data files relates to how the end user uses the content, such as viewing characteristics, end user viewing habits (See, for example, Specification, paragraphs [0035], [0036]). The two types of usage are therefore totally unrelated. In addition, Hoffberg col. 129, lines 4-7, merely discloses traffic reports, not usage reports. Traffic reports report the traffic on highway system, either an information highway or a real world highway (Hoffberg, col. 129, lines 1-4). In contrast, usage reports report the usage of the asset data files.

- e) "... by end users...", citing Hoffberg, col. 45, lines 38-40 (Office Action, page 3, paragraph number 4). Applicants respectfully disagree for the following reasons.

For ease of reference, the excerpt is copied below.

“The end user initially enters the requested data and the non-identifying information is transferred to the metering server.”
(Hoffberg, col. 45, lines 38-40.)

As seen from the above, Hoffberg, col. 164, lines 7-12, merely states that the end user entering requested data and the non-identifying information, not usage of the multimedia asset data files by end users of the MSO. The end user uses a graphical user interface (GUI) to participate in a survey (Hoffberg, col. 45, lines 20-22), which is not related to usage of content. As discussed above, the content usage is related to end user’s viewing habits or characteristics. See, for example, Specification, paragraph [0035].

Since Hoffberg does not disclose or suggest any of the above elements, the combination of Hoffberg with any reference is improper. The Examiner conceded that Hoffberg does not teach the use of multimedia asset data files and multiple service operators (Office Action, page 3, paragraph number 4). The Examiner, however, contends that Hoffberg can be combined with Sequeira and Roop because Sequeira teaches the use of multimedia asset data files and Roop teaches multiple service operators (MSOs) (Office Action, page 3, paragraph number 5; page 4, paragraph number 6).

The Examiner contends that Sequeira teaches:

a) “... associated with a multimedia asset data file...”, citing Sequeira, col.1, lines 6-9; col. 14, lines 51-53 (Office Action, page 3, paragraph number 5). Applicants respectfully disagree for the following reasons.

For ease of reference, the cited excerpts are copied below.

“This invention relates to a system and method for controlling, identifying and coordinating multimedia assets for a broadcast program and for increasing the tolerance of broadcast systems to the failure of the scheduler.” (Sequeira, col.1, lines 6-9.)

“When selected, the full name of the primary event is shown, in this example, the web site URL is identified in the data from the data file “stocks.sdf.”” (Sequeira, col.14, lines 51-53.)

As seen from the above excerpts, Sequeira merely discloses the general field of the invention which relates to a system and method for controlling, identifying, and coordinating multimedia assets for a broadcast program (Sequeira, col. 1, lines 6-9). This general field does

not specifically disclose receiving metadata associated with multimedia asset data files. Furthermore, all of the operations in this general field is not related to coordinating uploading the content. Controlling refers to control of different devices and media servers by using multiple device independent abstraction layers (Sequeira, col. 2, lines 66-67; col. 3, line 1). Identifying here refers to identifying events that are related to a program (Sequeira, col. 17, lines 57-58). Coordinating here may refer to distribute, administrate and monitor task and media server availability (Sequeira, col. 4, lines 16-20). None of these operations is related to receiving metadata or coordinating uploading the content. The excerpt at col.14, lines 51-53 is totally unrelated to multimedia asset data files, the uploading, or coordinating uploading, scheduling, or tracking uploading the data files. The identification of a Web site URL has nothing to do with multimedia asset data files. A Website URL is merely a locator.

b) "... uploading the multimedia asset data file..", "... wherein uploading the multimedia asset data file comprises ...", and "... of multimedia asset data files ...", citing Sequeira, col. 13, lines 49-51; col. 1, lines 3-9; col. 14, lines 51-53 (Office Action, page 4, paragraph number 5).. Applicants respectfully disagree for the following reasons.

For ease of reference, the above excerpt at col. 13, lines 49-51 is copied below. The excerpts at col. 1, lines 3-9; col. 14, lines 51-53, are shown above.

"The status ttLOADED from the video media server indicates that the task is loaded, queued and awaiting executing." (Sequeira, col. 13, lines 49-51.)

As seen from the above excerpt, Sequeira merely discloses that a status ttLOADED indicates that a task is loaded, queued, and awaiting executing (Sequeira, col. 13, lines 49-51). Loading a task simply means transferring the task to a queue waiting to be executed. The queue and the loader are local to a device (Sequeira, col. 9, lines 19-22; Figure 4A). In contrast, uploading multimedia data files involves transmitting the files from one device to a VOD server. It is an operation external to the device. Furthermore, tasks are commands which instruct a media server to perform an action such as initialize or play (Sequeira, col. 5, lines 48-49). Since a task is a command to perform an action, it is not a multimedia asset data file. In addition, since Sequeira explicitly discloses loading a task, Sequeira does not suggest uploading multimedia asset data files to a server. Moreover, since Sequeira does not disclose or suggest uploading

multimedia asset data files to a VOD server, Sequeira does not disclose or suggest coordinating uploading as recited in amended claims 1 and 20.

c) "... scheduling the uploading of the multimedia asset data file ..", citing Sequeira, col. 2, lines 59-65; col. 13, lines 49-51; col. 1, lines 3-9; col. 14, lines 51-53 (Office Action, page 4, paragraph number 5).. Applicants respectfully disagree for the following reasons.

For ease of reference, the excerpt at col. 2, lines 59-65 is copied below. The other excerpts are already copied and discussed above.

"In yet another aspect of the present invention, the Master Scheduler is adapted to schedule events where the viewing of an asset, such as graphics, animation, audio, text, video, or any other such digital media, constitutes the event and changes to a primary event causes all supporting events to be updated, as necessary." (Sequeira, col. 2, lines 59-65.)

In the above excerpt, Sequeira merely discloses a master schedule that schedules the event of viewing the content (Sequeira, col. 2, lines 59-65), not coordinating uploading or scheduling uploading the content. Scheduling uploading a content involves selecting distribution dates, selecting the appropriate set of content deployments, assigning marketing information, etc. See, for example, Specification, paragraph [0046]. Furthermore, scheduling an event only involves setting the times to show the event to the viewer, not interacting with other system components. In contrast, coordinating uploading involves interactions with other components participating in the upload. See, for example, Specification, paragraph [0046].

d) "... and tracking the uploading of the multimedia asset data file ...", citing Sequeira, col. 9, lines 18-20; col. 13, lines 49-51; col. 1, lines 3-9; col. 14, lines 51-53 (Office Action, page 4, paragraph number 5).. Applicants respectfully disagree for the following reasons.

For ease of reference, the excerpt at col. 9, lines 18-20 is copied below. The other excerpts are already copied and discussed above.

"Threads are use[d] by different parts of the system to perform various computations, functions and tracking. For instance, once a schedule is created, Task Distributor 410 transforms the schedule into a series of tasks and assigns the task to a thread and places the thread in Thread Pool and Queue 430." (Sequeira, col. 9, lines 18-20.)

In the above excerpt, Sequeira merely discloses threads are used to track. Tracking here refers to tracking status or tasks (Sequeira, col. 3, lines 10-12; col. 9, lines 60-62). As discussed above, tasks are commands which instruct a media server to perform an action such as initialize or play (Sequeira, col. 5, lines 48-49), not to upload a content to a server. Furthermore, these tasks are placed in a thread pool and queue, which is local to a device. In contrast, uploading a content to a server is an operation external to a device.

The Examiner further contends that Roop teaches the use of multiple service operator (MSO), citing Roop, col. 67, lines 62-63, and col. 71, lines 29-30 (Office Action, page 4, paragraph number 6).. Applicants respectfully disagree. For ease of reference, the above excerpts are copied below.

“If cable, this may be a system operated by a Multiple System Operator (MSO). If so, give the name commonly used in the community to identify this cable system. If satellite, give the usual letter/number combination used to refer to this satellite, such as G3 for Galaxy 3.” (Roop, col. 67, lines 62-67.)

“The data are sorted as described above; that is the currently-effective information for source A is given first (sorted in ascending order by tuned channel number)....” (Roop, col. 71, lines 29-31.)

As seen from the above excerpts, Roop merely discloses a television program schedule having an RG record that contains a field identifying an MSO (Roop, col. 67, lines 60-67; col. 68, lines 1-5). Having a record that contains an MSO name does not coordinate uploading, schedule uploading, or track uploading. A name in a record is a static entity, not an action. The excerpt at col. 71, lines 29-31 is only about sorting the data, not related to an MSO.

Independent claim 20:

Regarding independent claim 20, the Examiner contends that Sequeira teaches receiving a plurality of multimedia asset data files, citing Sequeira, col. 21, lines 10-12; col. 1, lines 3-9, and col. 14, lines 51-53 (Office Action, page 5, paragraph number 7). The Examiner further contends that Sequeira teaches uploading the multimedia asset data files, citing Sequeira, col. 13, lines 49-51; col. 1, lines 3-9, and col. 14, lines 51-53 (Office Action, page 6, lines 2-3). Applicants respectfully disagree for the following reasons discussed above.

In summary, none of Hoffberg, Sequeira and Roop discloses any of the above elements. Furthermore, there is no motivation to combine Hoffberg, Sequeira and Roop because none of them addresses the problem of VOD management. There is no teaching or suggestion that coordinating uploading metadata or content is present. Hoffberg, Sequeira or Roop, read as a whole, does not suggest the desirability of scheduling uploading or tracking uploading. For the above reasons, the rejection under 35 U.S.C. §103(a) is improperly made.

The Examiner failed to establish a prima facie case of obviousness and motivation to combine the references. When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to: (A) The claimed invention must be considered as a whole; (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and (D) Reasonable expectation of success is the standard with which obviousness is determined. Hodosh v. Block Drug Col. Inc., 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986). Here, the Examiner did not consider the claimed invention as a whole. The claimed invention is about a content management system that interacts with several components of a content delivery and distribution network to manage and coordinate the operations or activities. The operations of receiving metadata and the multimedia asset data files, coordinating uploading the metadata and the asset data files, and providing usage reports altogether constitute the content management system. None of the cited prior art references discloses or suggests these operations.

In addition, the Examiner considered the prior art references individually and cited the excerpts without examining their context. Some of the excerpts are not even relevant to the claimed invention. See, for example, Hoffberg, col. 133, lines 1-13; col. 164, lines 7-12; col. 129, lines 4-7; Sequeira, col.14, lines 51-53; and Roop, col. 71, lines 29-31.

One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. In re Fine, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). By citing the excerpts from Hoffberg, Sequeira and Roop in isolation, the Examiner is attempting to use hindsight reconstruction to attack the claimed invention. This practice has been repeatedly prohibited by the Federal Circuit.

Furthermore, the Examiner did not provide an analysis of the references regarding whether the references suggest the desirability of making the combination. "When determining the patentability of a claimed invention which combined two known elements, 'the question is whether there is something in the prior art as a whole suggest the desirability, and thus the obviousness, of making the combination.'" In re Beattie, Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 1462, 221 USPQ (BNA) 481, 488 (Fed. Cir. 1984). To defeat patentability based on obviousness, the suggestion to make the new product having the claimed characteristics must come from the prior art, not from the hindsight knowledge of the invention. Interconnect Planning Corp. v. Feil, 744 F.2d 1132, 1143, 227 USPQ (BNA) 543, 551 (Fed. Cir. 1985). To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the Examiner to show a motivation to combine the references that create the case of obviousness. In other words, the Examiner must show reasons that a skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the prior elements from the cited prior references for combination in the manner claimed. In re Rouffet, 149 F.3d 1350 (Fed. Cir. 1996), 47 USPQ 2d (BNA) 1453. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or implicitly suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." Ex parte Clapp, 227 USPQ 972, 973. (Bd.Pat.App.&Inter. 1985). Here, the Examiner merely provides excerpts from the prior art references in isolation. The Examiner did not analyze the references to identify the suggestion or the motivation to combine the references. To do so, the Examiner must provide a convincing line of reasoning, not just a list of isolated excerpts from the prior art references and a mere conclusion that the references can be combined (Office Action, page 4, lines 10-17; page 5, lines 3-11).

Even if the references can be combined, the Examiner must still identify the suggestion or motivation to combine in the prior art references, not from the Examiner's own suggestion. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Furthermore, although a prior art device

“may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so.” In re Mills 916 F.2d at 682, 16 USPQ2d at 1432; In re Fitch, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992). Here, the Examiner did not provide any suggestion or motivation in any one of Hoffberg, Sequeira and Roop to combine the references.

In summary, the cited references do not expressly or implicitly suggest any one of the above elements. In addition, the Examiner failed to present a convincing line of reasoning as to why a combination of Hoffberg, Sequeira and Roop is an obvious application of a content management system.

Therefore, Applicants believe that independent claims 1, 20, 25, 41, and 46, and their respective dependent claims are distinguishable over the cited prior art references. Accordingly, Applicants respectfully request the rejection under 35 U.S.C. §103(a) be withdrawn.



Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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Dated: January 31, 2006

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